

Legislative Update

Summary: This report includes descriptions of AB 2092 (Huffman) and SB 1450 (Simitian) and a list of other legislation regarding Delta water policy.

2092 (Huffman)

PURPOSE OF THE BILL

AB 2092 would implement key recommendations of the Delta Vision Taskforce.

DESCRIPTION

This bill would require the Council to develop, by January 1, 2013, a long term financing plan to pay the costs of implementing the Delta Plan including all projects, programs, and administrative costs identified in the plan. The plan would include various required elements:

- 1) An annual expenditure plan.
- 2) An estimate of existing state and federal funds reasonably expected to be available for covering costs identified in the plan.
- 3) An evaluation of existing CALFED programs to determine if funding for those programs could be redirected to the Delta Plan.
- 4) A definition of public and private benefits.
- 5) An analysis and description of the basis for allocating program and project costs among private and public interests.
- 6) A set of protocols to ensure that revenues would be expended as intended and not diverted for other purposes.

The finance plan would evaluate the benefits to all groups resulting from implementation of the plan including the public, water users and diverters, dischargers into the Delta, and recreational users.

The finance plan would allocate program costs to the general public and to specific interests proportionate to the benefits received or the negative impacts caused according to a beneficiary-pays principle. Non-general public benefits associated with

Delta Plan implementation would be paid for with fee revenues, contractual payments, and cost-share agreements. Prior to assessing any fee, the Council would be required to obtain statutory authorization.

In addition, the Council would be permitted to seek early funding from groups that benefit from the Delta Plan. This early funding would stand as a credit to these groups against any future fee or funding requirements.

Comments: Under current and proposed expenditure levels, the Council has about 12 months of funding for operations and planning. Given the state of the General Fund and the nature of the Council mission, some kind of fee authority will be essential to its future success. Because fee collections would presumably be ongoing throughout the fiscal year, the bill should be amended to provide for continuous appropriation of fee revenues.

In addition, it is not clear why any group would make an early funding contribution and thus bet or hope that the state would make good on the promise to provide a credit against future fee or funding requirements.

LEGISLATIVE HISTORY

SB 12 (Simitian) 2009, would have established the Delta Ecosystem and Water Council and would have authorized it to impose a per acre-foot fee on water diversions within the Delta and on water conveyed through or around the Delta. The fee revenue would be used to support programs of the council, the Delta Protection Commission, the Department of Fish and Game, the Department of Water Resources, and the State Water Resources Control Board. The bill was placed on the Senate inactive file.

SB 113 (Machado) 2005, would have required the California Bay-Delta Authority, in undertaking the review, approval or modification of annual program plans and expenditures, to consider the extent to which those plans or expenditures are consistent with the beneficiary pays principle. Held in Assembly Water, Parks and Wildlife Committee.

SB 1450 (Simitian)

PURPOSE OF THE BILL

This bill is intended to provide a streamlined contracting process to help meet the timeline for developing the Delta Plan.

DESCRIPTION

This bill would allow the Council to contract for consultant services and architectural and engineering services for the following purposes:

- 1) To prepare the Delta Plan and the associated environmental review.
- 2) To meet the statutory responsibilities of the Council and the Independent Science Board with respect to the Bay Delta Conservation Plan.
- 3) To make consistency determinations for state and local public agency actions with the Delta Plan.
- 4) To perform scientific reviews to inform water and environmental decision making.

This bill also includes exemptions from various state contracting and reporting statutes governing personal services and consultant contracts:

- 1) Architectural, engineering, and environmental services: the exemption would allow the Council to establish contract procedures with private firms without writing regulations subject to Office of Administrative Law (OAL) review.
- 2) Personal services contracting requirement: the exemption would allow the Council to hire non-state personnel to provide highly specialized or highly technical services not available within civil service.
- 3) State Contract Act exemption: the exemption would allow the Council to contract for consultant services without Department of General Services review and approval.

Notwithstanding these exemptions, the Council would be required to establish procedures for contracting for services in lieu of adopting formal regulations that would have to be reviewed and approved by the OAL under the Administrative Procedures Act.

Comments: The Council has hired consultants to prepare the Delta Plan. Because the Department of Water Resources (DWR) has the authority to make contracts for architectural, engineering, and environmental services, the management of the solicitation and bid processes was done by DWR. The Council did not have enough time to develop its own regulations for these services and still meet the 2012 deadline for the Delta Plan.

Had the Council assumed the task of making this contract on its own, it would have had to submit regulations to OAL for its review, thus delaying contract issuance for many months. This delay would have made it impossible for the Delta Plan to be completed by the Jan. 1, 2012 statutory deadline. Now that DWR has executed the contract and has prepared the initial task order, the contract and task order have been assigned to the Council.

LEGISLATIVE HISTORY

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List of Attachments

Attachment 1 – Other Bills of Interest

Contact

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